

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Section 68.4 of the Commission's Rules)	WT Docket No. 01-309
Governing Hearing Aid-Compatible)	
Telephones)	
)	
Petition for Waiver of)	
Section 20.19(c)(2)(i)(B)(1) of the)	
Commission's Rules)	

**Amendment to Petition for Limited Waiver
of Section 20.19(c)(2)(i) of the Commission's Rules**

Texas RSA-1 Limited Partnership d/b/a XIT Wireless ("XIT"), by its attorneys, hereby amends its September 16, 2005 petition seeking a limited and temporary waiver of Section 20.19(c)(2)(i) of the Federal Communication Commission's ("FCC" or "Commission") rules.¹ In its *Petition*, XIT requested a six month extension until March 17, 2006 to offer in the GSM portion of its network at least two handsets meeting a U3 or higher interference rating. XIT hereby amends the *Petition* to request that the requested relief be extended through April 25, 2006.

I. BACKGROUND

XIT treats its hearing aid compatibility ("HAC") obligations seriously and it has made every effort to comply with all applicable HAC requirements. In accordance with its reporting obligations, XIT has timely updated the Commission every six months on its efforts to obtain HAC compliant handsets. In addition, XIT has worked diligently to obtain GSM HAC complaint handsets, but, as the Commission is well aware, ran into difficulties due initially to manufacturer delay in development and certification of HAC compliant handsets and, thereafter, due to delayed

¹ XIT Petition for Limited Waiver of Section 20.19(c)(2)(i)(B)(1) of the Commission's Rules, WT Docket 01-309 (filed September 16, 2005) ("*Petition*").

distribution to Tier III carriers resulting from larger carrier demand. Due to XIT's inability to obtain two handsets that are HAC compliant from its handset vendor XIT filed its *Petition*.

On September 30, 2005, XIT began offering for sale the Motorola V3 (Razr), a handset certified on September 15, 2005 as HAC compliant. Accordingly, from September 30, 2005 any hearing impaired individual had the ability to purchase a HAC compliant handset from XIT.

On March 15, 2006, XIT obtained and made available for sale the Nokia 6101, a handset it believed met at least a U3 interference rating. However, on April 13, 2006, XIT learned that the Nokia 6101 that it had available for sale was not hearing aid compatible and that it was in fact the Nokia 6101(h) model that is HAC compliant. Prior to ordering, XIT had referenced a list it obtained of HAC compliant handsets on which the Nokia 6101(h) was identified. XIT then mistakenly referred to the handset as the Nokia 6101 when placing its order with its handset vendor. When the phones arrived, XIT believed that the handset was a HAC compliant model and therefore offered it to the public as such. Because no hearing impaired customers inquired about or purchased the handset during the month it was offered for sale, XIT did not learn of the handset mistaken identity until April 13, 2006 when it was researching a response to an informal FCC staff inquiry on the packaging and labeling of the handset. XIT immediately contacted its vendors and found that it could not obtain the Nokia 6101(h), but that it could obtain the Nokia 6061, another recently certified HAC compliant handset. On the same day, April 13, 2006, XIT began offering for sale the HAC compliant Nokia 6061. Thereafter, on April 25, 2006, XIT made the Nokia 6061 available for in store testing in each of its retail stores. Accordingly, XIT hereby amends its *Petition* to request relief until April 25, 2006.

II. XIT Satisfies the Relevant Standards for Waiver of the Commission's Rules

Section 1.925(b)(3) of the Federal Communication Commission's rules sets out the general standards for determining when a waiver should be granted in Wireless Telecommunications

Bureau proceedings:

The Commission may grant a request for waiver if it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²

Under both of these standards, grant of the requested waiver and amendment is warranted. Application of the Section 20.19(c)(2)(i) handset deadline to XIT would be inequitable in light of XIT's good faith efforts to make available for sale two HAC compliant handsets as soon as possible and the unusual circumstances prompting the need for this request. Although XIT was mistaken that the Nokia 6101 was HAC compliant, upon learning of the mistaken identity of the handset it offered, XIT quickly replaced the model with another Nokia model that is HAC compliant. XIT's mistaken belief that the Nokia 6101 was HAC compliant did not prevent XIT's customers from obtaining HAC compliant handsets during the brief period that it was offered for sale. XIT has had available for sale to any hearing impaired customer at least one HAC compliant handset model since September 30, 2005. XIT also notes that it has never received an inquiry from a customer or potential customer regarding the availability of HAC compliant handsets. Given the ability of XIT's customers to obtain a HAC compliant handset from XIT, the lack of any actual inquiries into the availability of such handsets, and the relatively short period of time

² 47 C.F.R. § 1.925(b)(3).

during which XIT offered what it mistakenly thought was a second HAC compliant handset, grant of the requested waiver is consistent with the public interest.

Grant of the requested waiver is consistent with both the public interest and the underlying purpose of the Commission's HAC benchmarks set forth in Section 20.19. The purpose of Section 20.19 is to "facilitate the Congressional goal of ensuring access to telecommunications services for individuals with hearing disabilities."³ As discussed herein, XIT made available for sale one HAC compliant handset and believed that it was offering a second HAC compliant handset prior to the expiration of its waiver. Once XIT learned of its mistake, XIT immediately obtained an additional HAC compliant handset so that it could satisfy the Commission's rules. Therefore, a temporary limited waiver until April 25, 2006 is entirely consistent with the underlying purpose of the HAC handset requirement. Given that XIT did not discover the error until April 13, 2006, it had no reasonable alternative but to seek additional waiver relief.

Based on the foregoing and on the *Petition*, XIT respectfully requests that the Commission grant XIT's amended *Petition*.

Respectfully submitted,

Texas RSA-1 Limited Partnership d/b/a
XIT Wireless

By: _____ /s/ _____

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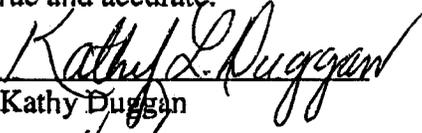
Dated: April 25, 2006

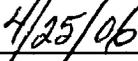
³ See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Report and Order, WT Docket No. 01-309, 18 FCC Rcd 16753 at ¶4 (2003) ("*HAC Order*").

DECLARATION OF KATHY DUGGAN

I, Kathy Duggan, do hereby declare under penalty of perjury the following:

1. I am the Assistant General Manager of Internal Operations of Texas RSA-1 Limited Partnership d/b/a XIT Wireless.
2. I have read the foregoing "Amendment to Petition for Limited Waiver of Section 20.19(c)(2)(i) of the Commission's Rules." I have personal knowledge of the facts set forth therein, and believe them to be true and accurate.


Kathy Duggan


Date